

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10417 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANVANTRAY M VASAVDA

Versus

STATE OF GUJARAT & 1

Appearance:

MR PV HATHI for Petitioner

RULE SERVED for Respondent No. 1

MR PM THAKKAR for Respondent No. 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 21/04/98

ORAL JUDGEMENT

This is a writ application of 1994 for pension relief. The Court has no option to proceed to deal with the matter in accordance with law without any assistance on behalf of the respondents. There is no Govt. Pleader in this Court since 11.00 a.m. till now 1.00 a.m.

2. The petitioner claims the retirement benefit

under the Pension Scheme (Annexure B Page 16) dated 15.10.1984. This Government Resolution was applicable only to the staff who existed on 1.4.82 and retired thereafter. Therefore this was not applicable to the petitioner because he had retired before that date.

3. However, by another Government Resolution dated 25.4.91 (Annexure C), the benefit of the Pension Scheme of 1984 was extended to those who had retired after 1.1.73 and before 1.4.82. The petitioner therefore claimed that he should be given benefit of the pension scheme because he has retired at the age of 65 after 1.1.1973.

4. His claim is rejected by letter dated 14.5.92 (Annexure H1), wherein it is stated that the benefit of the new GR was applicable only to those who had reached the age of superannuation after 1.1.73 and before 31.3.82 and it is further stated that the petitioner's age of superannuation was prior to 1.1.1973 and therefore he was not entitled to the benefit of the New GR.

5. Therefore the question is what is the age of superannuation of the petitioner and whether the petitioner had reached the age of superannuation before 1.1.73 or after 1.1.73.

6. The petitioner's birth date is 30.3.1909 and therefore he reached the age of 60 years on 30.3.1969 and reached the age of 65 years on 30.3.1974. There is no dispute that the petitioner had continued in service till 10.6.1974. The petitioner relies on the Saurashtra University Resolution no.2 dated 24.2.1973 (Annexure J) item no.15 which reads as follows:-

15. "No person who has completed the age of 65 shall be appointed as a teacher in any college. The age of retirement shall be 60 years. The teacher may be re-employed or his services may be extended upto 65 years only by extending his term year by year after the age of 60. If there is re-employment, the teacher shall be given U.G.C. scale of the post on which he is re-employed and shall be entitled to Provident Fund, House Rent Allowance and all other recognised allowances. Such re-employment shall not be considered as continuation or the original service.

If the services of a teacher are extended he shall be given the same grade and salary in which he was working before extension of service and he

shall be entitled to increments year by year and he shall also be entitled to Provident fund, Gratuity, House Rent Allowance and all other recognised allowances."

7. It is the petitioner's case that his date of superannuation was extended beyond the age of 60 by giving extension and the petitioner's service was extended and he was given the same scale in which he was before extension of service and also he was given yearly increments and was also entitled to PF, gratuity and all other allowances. This is not disputed. It is thus clear in the case of the petitioner that age of superannuation was extended beyond 1.1.73. Therefore the decision of the Government that he has reached the age of superannuation before 1.1.73 is illegal and contrary to facts.

8. The Government Resolution dated 15.10.1984, Para 8 provides that the age of superannuation shall be 60 years but only to the existing staff i.e. the staff who were to retire after 1.4.82; and that cannot apply to the person who had retired prior to that date.

9. In the result, the petition succeeds and the rule is made absolute by declaring that the petitioner is entitled to the benefit of the Government Resolution dated 15.10.84 read with the Government Resolution dated 25.4.1991; and the order dated 14.5.92 (Annexure H1) is illegal; and the respondents are directed to fix the pension of the petitioner within three months from today on the basis that the petitioner reached age of superannuation and the date of retirement after 1.1.73 and to pay him all arrears of pensionary benefits under the Pension Scheme and continue to pay to him regularly. The petitioner shall also be entitled to interest at the rate of 10% on the arrears of pensionary benefit under the pension scheme from the date such payment has become due under the GR dated 25.4.91 and the date of actual payment.

10. The petitioner has already reached the age of about 89 years and therefore it shall be seen that the pensionary benefit is received by him within three months from today. The petitioner may have been paid his P.F. & other retirement benefits when he retired in 1974. If any amount is required to be adjusted towards the benefits under the Pension Scheme, it would be open to the government to adjust the same. Rule is made absolute with costs.

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